

TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
December 7, 2005

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Dan Remian, Town Attorney Greg Cunningham, CEO Scott Bickford and Secretary Pro Tem Crystal Robinson

Board Absent: Chairman Mike Roberts

Call to Order: Vice-Chairman Kiskila called the meeting to order at 7:00 pm.

1.Minutes of Previous Meeting:

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, to accept the minutes of the 11/2/05 meeting as presented.
Carried 3-0-1 (Mr. Ellis abstained)

2.Dwayne and Dale Prior subdivision application, Map 1, Lot 103. Mr. Kiskila said he understood the abutters had not been notified of this application and CEO Bickford confirmed this. Mr. Bickford suggested the Board discuss the project, point out any issues they had with the application and then table it until the next meeting. Mrs. Kalloch agreed to send the abutters' letters. It was noted that George Heino's lot was the first sold in the subdivision. Mrs. Kalloch asked the CEO if the subdivision road names needed to be changed to meet 911-emergency requirements. Mr. Bickford said that would be taken care of before the next meeting. Mr. Ellis asked who was responsible for notifying abutters and Mr. Bickford said it had historically been the Chairman's job, though there had been a glitch this month. Mr. Bickford suggested the review criteria be postponed, on advice of Attorney Cunningham, who had not yet arrived.

The Board thought the application and plan looked good. Mr. Ellis asked if the fire pond needed an access easement from the road and the Priors stated that the road was wide enough for a fire truck. Mr. Kiskila said there was water running into the fire pond but there would need to be more before he could test it and issue an approval.

ACTION: Mr. Remian made a motion to table the application until the next meeting so the abutters could be notified.
Carried 4-0-0

Town Attorney Greg Cunningham arrived at 7:15 pm.

3. John Mathieson, Surveyor, pre-application for subdivision, land of Elisabeth Ogilvie, Map 7, Gay Island. Mr. Mathieson presented plans and clarified for Mrs. Kalloch the area of the subdivision on the island. He said the subdivision would contain four lots and pointed out the 3.4 acres that would be transferred to John Wadhams. Mrs. Ogilvie would retain the office building where her books were written. Mr. Mathieson noted a 40-year verbal easement to the camp of the Morris family, which would be transferred to the Morris Family Trust. He then discussed various abutters, whose land was not included in the subdivision, including a parcel deeded to the Audubon Society. Mr. Ellis clarified that the only portion to be considered by the PB were the 13.4 acres containing an old farmhouse, the Morris area and 10.63 acres to be conveyed out as a separate parcel.

Mr. Mathieson stated that all the land being conveyed was covered by a conservation easement. This easement was very extensive, with requirements more restrictive than the town's, i.e. 100' setback versus the town's 75' setback. He said soil tests had been performed on the farm and office lots, as well as on the 16.6-acre area and the existing Morris camp, which had a privy. Mr. Mathieson stated there were two old wells on the island. He said only one small bunkhouse would be built and the definition of that was being worked out with the Audubon Society.

Mr. Mathieson clarified for Mr. Knowles some lots would be given to abutters, and listed them. Mr. Ellis expressed confusion as to the lots going to abutters and asked that the plan contain wording to clarify their disposition. Mr. Cunningham asked Mr. Mathieson to clearly indicate by lines on the plan the current holdings of abutters to Mrs. Ogilvie's property, as well as what would be conveyed to each abutter from her. Mr. Mathieson verbally explained the relative situation with each abutter. Mr. Ellis asked that the application be corrected to show a 4-lot subdivision, rather than a 7-lot, since three lots would be conveyed to abutters. Mr. Cunningham suggested that the plan be limited to information pertinent to the application. The Board agreed that the present plan was confusing and appreciated their attorney's suggestion. The application was rescheduled for preliminary review next month.

4. Last Resort Holdings, LLC, application for amendment to Meduncook Plantation subdivision, presented by James Tower. Mr. Tower gave his usual introduction and said Last Resort Holdings had acquired the property of Red Robbins and wanted to extend Ocean Ridge onto that property, to annex Lot 26 into Meduncook Plantation subdivision and amend the size of Lot 10 by increasing the acreage. Mr. Tower said he had delivered last weekend to each PB member and the CEO a drawing showing minor changes from that included in his application. He stated that the project had one abutter, the West Knoll Wildlife Conservation Trust [WKWCT], whose representative, Mr. Dugan, had received an identical packet.

Mr. Tower distributed complete roadway drawings showing the layout, profile and crosssections. He said the design had been tweaked to prevent fill in the roadway; there were two small areas where the right hand side of the road (in his original design) included 2'-3' of fill. Mr. Tower said this was "serious" terrain and he did not want to put any fill in the roadway. Instead, the roadway would be chiseled from bedrock to eliminate the possibility of a rockslide or a traffic hazard. Mr. Tower said he would constrict the road from 20' wide with 3' shoulders to 16' wide with 3' shoulders, starting at the top of the hill where the road currently ended. The road was now 2900' long, exceeding the 2000' distance allowed from the fire pond by 200'. For this reason, Mr. Tower requested a deed covenant that the houses on Lots 10 & 26 be constructed with residential sprinkler systems in lieu of the fire pond requirement. Mr. Tower stated that the soil test pit profile for Lot 26 was included in the PB packets and said a DEP approval would be required because this was an expansion of a previously approved subdivision.

Mr. Ellis asked if the three lots actually constituted a new subdivision rather than an extension of the existing one? Mr. Tower would not say how many lots he intended to make, only that three would be the maximum. Mrs. Kalloch asked whether this expansion required notice to abutters. Mr. Tower said it did not because the deed covenants allowed the subdivision to be amended by annexing land. Mrs. Kalloch agreed with Mr. Ellis that this was a new piece of property and not an amendment, because it exceeded the boundaries of the approved subdivision. Mr. Ellis addressed that question to Mr. Cunningham, who said if this were the tacking on of an additional lot taken from adjacent contiguous retained lands of the original developer it could be done. Mr. Ellis noted that Mr. Tower did not own Mr. Robbins' land when the original subdivision was approved.

Attorney Cunningham felt an amendment was acceptable and noted that Mr. Tower would be using an existing road; reference was made to the covenants Mr. Tower had put in place. Mr. Cunningham cited from Pg. 3 of the Cushing Subdivision Ordinance, Subsection 2, referring to additions by the developer. There was a brief discussion of court cases that might be relevant to Mr. Tower's addition of land to an existing subdivision. Mr. Cunningham said he was not convinced that Mr. Tower's declaration of covenant notified the current lot owners of the potential existence of additional users of the road; he

would feel more comfortable if a real estate attorney looked at the covenant language. Mrs. Kalloch asked if the current lot owners would need to be notified of the plan to increase the number of lots? Mr. Cunningham said there was a strong argument that the current owners would have to consent to the additional lots unless Mr. Tower's covenant negated that necessity. Mr. Tower said that the road had not yet been turned over to the homeowners' association and was still owned by Last Resort Holdings, LLC.

Mr. Ellis said the applicant's plan included the Robbins, West Knoll and Young properties and asked if he planned to subdivide further. Mr. Tower said he did not and those properties were included only for informational purposes. Tom Dugan of WKWCT said the three lots' owners (WKWCT, Young and Robbins) had worked together in the past due to protect wildlife and provide access. He stated that WKWCT had no agreement with Mr. Tower to sell him its land and its objectives were much different from those of Mr. Tower.

Mr. Haviland asked Mr. Kiskila his opinion of the sprinkler plan. The Fire Chief said it was an excellent idea, adding that the system would work in the case of power failure because it was pressurized. In his opinion, it was more desirable than a fire pond and might become a requirement in the future. In response to a question from Mrs. Kalloch, it was suggested that a 2,000 Sq. Ft. house's sprinkler system would require 900 gallons of water. Mr. Kiskila said the road would be too steep for a fire truck in the winter. Mr. Ellis asked Mr. Cunningham if a fire pond waiver could be granted under the PB's regulations. The attorney asked how the sprinkler systems would be enforced and Mr. Tower replied that they would be required by individual deed covenants. Mr. Cunningham noted that the ordinance (Subsection 9.12B(1 & 1A) required a "permanently accessible water supply", the interpretation of which could be left to the Board. Mr. Ellis asked if this would set a precedent and Mr. Remian remarked that it would be a good one. Mr. Cunningham wondered, even if it set a precedent, if the Board had the authority to approve it? Mr. Cunningham said all of the other examples of water supplies in the ordinance were natural phenomena.

Mr. Haviland asked if the sprinkler system would be accessible to the Fire Dept. if the owner were absent, saying alarm systems could be complicated. Mr. Cunningham said he thought the water should come from a natural supply or the Board could require storage tanks or cisterns, determining the size and number of them. Mr. Tower said that a site visit would confirm that soil conditions would not support a fire pond, but Mr. Cunningham suspected there was a location within the subdivision where the fire pond could be dug. Fire Chief Kiskila said his new truck held 2500' of hose and he felt the Board should consider incorporating sprinkler systems into the ordinance. Mr. Ellis said he shared Mr. Haviland's concern that a sprinkler system should be functional year-round.

Mr. Ellis asked if the land east of the road would be included in the subdivision. Mr. Tower replied that it would not, though there would be an additional common area with a hiking trail included in a separate amendment. Mr. Young, an abutter, asked that it be part of the public record that the survey lines were not definitive and Mr. Tower said he had a registered surveyor's map showing the lines. Mr. Kiskila said the Board needed an opinion from their attorney before making a decision and the CEO reminded him that this was a pre-application meeting only.

Mr. Dugan stated that WKWCT had serious problems with communications to nearby islands, where the WKWCT families lived; VHF radios had been successfully used in the past, but there was no cell phone reception. In the case of emergency rescues for residents, Mr. Dugan said the road coming into the Gaunt Neck peninsula could be invaluable for rapid access. Furthermore, WKWCT liked the idea of a neighbor on Lot 26 and Mr. Dugan strongly supported the idea.

Attorney Cunningham said the Resource Protection Zone [RPZ] was not depicted on Mr. Tower's plan. Mr. Tower disagreed, saying both RPZ and the 100-year flood zone were shown and pointed them out. Mr. Ellis said the RPZ was not clearly marked and Mr. Tower said it was the 75' line. Mr. Cunningham and the CEO said the 75' line was for natural resource protection, not the RPZ. Mr. Ellis clarified that he was talking about a district within the Shoreland Zone. The CEO said RPZ was based on slopes of 20%

or more within 2 or more contiguous acres. Mr. Bickford said that while a subdivision could be within the RPZ, no building could be erected within the zone. Mr. Cunningham agreed with the CEO that 250' was the correct setback for the RPZ and stated that a field determination trumped a map, according to the PB guidelines. He said the burden of proof was on the applicant to show he was not in the RPZ. The CEO suggested the PB get an outside determination of the RPZ and Mr. Cunningham said the road appeared to be close to the RPZ. The PB discussed whether a determination from Inland Fisheries as to the RPZ and a surveyor's stamp concerning slopes would be acceptable. Mr. Tower referred to Page 16 of the Shoreland Zone Ordinance, which said roads and driveways were permitted in the Shoreland Zone to provide access to permitted uses. Mr. Tower directed the PB's attention further to where it said that if no other reasonable alternative existed it could be reduced to 50' from the 75' setback. Mr. Cunningham said the plan needed to depict with certainty, supported with evidence, where the RPZ was located. Mr. Tower countered that the PB had approved many subdivisions lately that had no such information. He concluded that the way to get a subdivision approved in Cushing was to provide no information. He said he would depict the RPZ on his plan, qualifying that he was permitted to travel through an RPZ to access a permitted use.

Mrs. Kalloch said she felt the PB should hold a site walk. Mr. Ellis asked if Mr. Tower would be presenting updated financial information. Mr. Tower replied that he did not want to offer more than the letter from his bank. CEO Bickford thanked Mr. Tower providing the new maps, etc., to both him and the Board members.

5. Old Business: None

6. New Business: None

7. Adjournment: The meeting was adjourned at 9:10 pm.

Respectfully submitted,

Deborah E. Sealey
(Transcribed from the notes of Crystal Robinson and the audio recording)